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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Local Exchange Carriers' Rates,	)	
Terms, and Conditions for Expanded	)	CC Docket No. 94-97, Phase II
Interconnection Through Virtual	)	
Collocation for Special Access and	)	
Switched Transport	)	
	)	

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RESPONSE TO PHASE II DIRECT CASES BY THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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SUMMARY

This should have been a simple proceeding. In Phase I of this docket the Commission concluded that the overhead loadings applied by the Local Exchange Carriers ("LECs") to the virtual collocation rates paid by their interconnector-competitors should be no higher than the overhead levels attributed to those LEC services with which interconnectors attempt to compete by purchasing virtual collocation. The Commission's concern, of course, is that the LECs should not be allowed to apply a "wholesale price squeeze" to their interconnector-competitors by effectively charging interconnectors more for the same functions than they currently recover from customers subject to interconnector competition. ALTS agrees with this approach, and its members are fully prepared to pay the same direct costs that are paid by the LECs' most-favored customers subject to competition, plus any documented cost differences between end users and interconnectors for the same functionality.

Applying this principle in its Phase II Designation Order, the Commission ordered the LECs to identify specific direct costs being assessed interconnectors, and to defend those costs by comparing them to amounts for similar items which are recovered from customers in services subject to interconnector competition. The Commission facilitated this comparison by directing the LECs to prepare sample price-outs. Specific, supported cost differences between the interconnector and end user versions for

particular functions (power, floor space, etc.) would then be calculated by the LECs, and the net result, applied to the lowest amount recovered from LEC end users, would form the maximum lawful rate level.

Unfortunately, the LECs simply refuse to comply with these requirements of the Phase II Designation Order. Of the Direct Cases submitted by the five Regional Bell Holding Companies ("RBOCs") which rely solely on virtual collocation for expanded interconnection -- Ameritech, Bell Atlantic, BellSouth, SWB, and US West -- two companies (Ameritech and SWB) refuse to provide supporting cost information, claiming this information is privileged under the Freedom of Information Act ("FOIA"), and all the direct cases decline to calculate specific amounts for similar direct costs that are recovered from comparable services in any meaningful fashion.

Of course, these RBOCs trot out the usual shopworn excuses for their non-compliance: "Can't be done!" "Bad idea!" "Too much work!" "Different rate structures!" "Functions and services aren't comparable!" These claims are completely frivolous, as shown by the many state and Federal proceedings in which these carriers routinely perform the kind of analysis requested here, and as also shown by US West's anti-discrimination compliance reports to DOJ, which it refuses to make available here. Furthermore, the fact that rate structures are different does not prevent the carriers from calculating the amount being recovered for a particular function under a different structure. This concerted and plainly unmeritorious refusal to comply with a relatively simple designation order bears the same signs of anti-competitive intent as the Bell System tariff filings that were found unlawful by the Federal courts in MCI v. AT&T, 708 F.2d 1081, 1153-59 (7th Cir. 1983). But issues of antitrust violations will ultimately have to be settled elsewhere.

More important for current purposes is the fact this is not a criminal case, where the carriers can refuse to take the stand by pleading the Fifth Amendment. The Phase II Designation Order spells out the hard evidence the carriers must file in order to support the portions of their rates which recover certain direct costs. Having chosen not to provide that evidence -- for good reasons or bad -- the carriers have failed to carry their burden of proof and the associated portions of their rates must be found unlawful. They are free to appeal the Phase II Designation Order, but as far as these Commission proceedings are concerned, they have defaulted on their case.

Accordingly, ALTS requests that the Commission:

- Order the five RBOCs which do not provide physical collocation to immediately refile their virtual collocation tariffs to reflect total direct costs which are no higher than the lowest total for such costs filed by a Tier 1 carrier; and,

- Order that this Phase II rate prescription is without prejudice to these carriers refiling new tariffs reflecting different direct costs, provided such new tariffs are accompanied by all the cost support and sample price-outs required in the Phase II Designation Order.

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In the Matter of	)	
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Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport	)	CC Docket No. 94-97, Phase II

RESPONSE TO PHASE II DIRECT CASES BY THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Order Designating Issues for Investigation released September 19, 1995, in this docket ("Phase II Designation Order"), hereby responds to the Direct Cases filed October 19, 1995, by the five regional Bell holding companies which have declined to continue physical collocation, and which instead provide expanded interconnection exclusively through virtual collocation -- Ameritech, Bell Atlantic, BellSouth, SWB, and US West.

I. ALTS' INTEREST IN THIS PROCEEDING AND THESE TARIFFS

ALTS is the non-profit national trade organization representing competitive providers of local telecommunications services. ALTS' membership includes over thirty non-dominant providers of competitive access and local exchange services which deploy innovative technologies in many metropolitan and suburban areas across the country. ALTS, as well as several of its individual members, participated actively in the Commission proceedings which gave rise to the tariff filings under examination here (Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141), and ALTS' members will be among the first to order services pursuant to these tariffs.

II. THE RBOCS SHOULD NOT BE ALLOWED TO CONTINUE DISREGARDING THE COMMISSION'S STANDARD FOR RECOVERY OF DIRECT COSTS VIA EXPANDED INTERCONNECTION SERVICES.

A. The Commission's Standard for Determining the Proper Level of Direct Costs Recovered via Expanded Interconnection Services Is Unmistakably Clear.

The Commission's overarching approach to the issue of the lawful maximum level for virtual collocation rates has been clear for some time now. Quite simply, the Commission has correctly determined that the risk of a "wholesale price squeeze" by the Local Exchange Carriers ("LECs") is entirely serious, and must be deterred. Under such a scenario, a monopolist threatened by competitive entry will charge more for an input which is used by its competitors than it will for the same input when provided to its customers, thereby handicapping or destroying its competition. See Virtual Collocation Order at ¶24: "LECs do not have an incentive to obtain the lowest possible price [for interconnector-designated equipment], since their costs will be passed on to their competitors, the interconnectors." But since the RBOCs in their Direct Cases refuse to acknowledge this plain standard for virtual collocation, a brief review is necessary.

In 1993, the Common Carrier Bureau tried to conduct a common sense comparison of the expanded interconnection overhead loadings with loadings for DS-1 and DS-3 services.[1] It issued a designation order requiring the LECs to submit detailed, disaggregated overhead data for each comparable service, and expressly included all generic DS-1 and DS-3 services, as well as discounted volume and term pricing plans.[2] As the Bureau acknowledged in its Virtual Designation Order (at ¶12): " ... the Bureau did not receive adequate overhead loading data regarding comparable services ...."

Given its inability to obtain the required data, the Bureau used the Commission's Virtual Interconnection order in July of 1994[3] to underscore the importance of this information through a tariff review order:

> "Overhead cost factors. To enable us to evaluate the reasonableness of overhead amounts included in expanded interconnection service (EIS) rates, LECs must submit the following information regarding the overhead loadings for EIS and comparable services: LECs must provide the overhead factors used for each EIS rate element, identify the cost basis for these factors, explain how the factors were derived from that basis, and justify the reasonableness of the factors....
>
> "LECs also must provide, on a service-by-service basis,

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[1] Special Access Physical Collocation Tariff Suspension Order, CC Docket No. 93-152, 8 FCC Rcd (1993).

[2] Special Access Physical Collocation Designation Order, CC Docket No. 93-152, 8 FCC Rcd 6909 (1993).

[3] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC Rcd 5154 (1994).

overhead factors for all point-to-point DS1 and DS3 special access services offered. In addition, overhead factors must be provided on a service-by-service basis for all DS1 and DS3 switched transport services if the rates for these switched services differ from the special access rates. For the purposes of this request, these special access and switched services for which overhead factors must be listed are not limited to the generic electrical and optical service. They also include the discounted volume and term services; channel termination services; interoffice services comprised of channel termination and channel mileage; and any specialized service offerings, e.g., self-healing network services"[4] (Emphasis supplied.)

The data submitted by the LECs in support of their virtual collocation tariffs demonstrated no consistency in their allocation of overhead costs to high capacity services in comparison with their expanded interconnection services:

"The information submitted by the LECs in support of their proposed rates shows substantial differences between the loading factors they propose to apply to their charges for expanded interconnection services and those currently applied to comparable services .... Based on the LECs' statements and submitted cost data, we conclude that the great disparity exhibited in overhead loading primarily reflects market conditions."[5]

Based on this disparity in allocations, the Bureau suspended the LECs' virtual collocation rates to the extent they recovered overhead allocations in excess of those recovered by comparable services, absent justification.[6] On February 28, 1995, the Phase I Designation Order required the LECs to provide that

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[4] Tariff Review Plan Order, released July 25, 1994, DA 94-819, ¶¶11-12, footnotes omitted.

[5] Virtual Collocation Tariff Suspension Order, CC Docket No. 94-97, released December 9, 1994, ¶¶ 20-21.

[6] Id. at ¶ 16.

justification.

In its Phase I Order released May 11, 1995, the Commission concluded that (at ¶ 20): " ... the LECs have again failed to justify adequately the substantial differences between their loadings for virtual collocation services and those applied to comparable services." In particular, the Bureau noted that (at ¶¶ 38, 40):

> "None of the LECs has presented convincing arguments that we should modify the Bureau's definition of comparable services ... The Bureau reasoned that if the overhead loadings assigned to these comparable DS1 and DS3 services differ, without adequate justification, from the overhead loadings assigned to virtual collation services, LECs could unreasonably discriminate against interconnectors. The Bureau was concerned, specifically, that by assigning low overheads to the point-to-point services with which interconnectors compete, and high overheads to the LEC facilities upon which interconnector rely to provide competitive services, the interconnectors could be disadvantaged competitively."

The Commission's Phase II Designation Order which commenced the present proceeding continues this same underlying policy concern as to anti-competitive tactics (see, e.g., Phase II Designation Order at ¶ 21): "These LECs must discuss whether their procedures for determining the lowest reasonably available price differs when the interconnector designates the same type of equipment that the LEC uses in a particular central office."

But the Commission's clear and consistent requirement that the carriers must prove that their rates are not anti-competitive has again fallen on deaf ears. Ameritech and SWB refuse to supply cost support, claiming Freedom of Information Act protection, and all five RBOCs which provide expanded interconnection solely through virtual collocation calculate virtually no specific amounts for similar direct costs which are recovered from end users of comparable services.

The time has come for this concerted monopoly defiance to stop. The Phase II Designation Order sets forth the carriers' burden for defending certain specific direct costs. Now that the carriers have declined to meet that burden, whether because of good reasons or bad, the Commission should disallow all investigated direct costs to the extent they exceed the lowest total for such costs filed by a Tier 1 carrier, without prejudice to the filing of new virtual collocation tariffs reflecting different direct costs if accompanied by the cost evidence and Tariff Review Plan ("TRP") required in the Phase II Designation Order.

B. The RBOCs Are Also Subject to Scrutiny of Their Direct Costs Under the MFJ.

There is nothing novel or unique about the Commission's attempt to analyze the possibility of predatory pricing in its review of direct costs. Indeed, the same concern is also reflected in the requirements of the Modification of Final Judgment ("MFJ"). Unfortunately, the RBOCs in general, and US West in particular, absolutely refuse to acknowledge that they bear any MFJ-compliance obligations in their dealings with the

FCC.[7]

US West's intransigence is alarming, given that US West is already subject to an Enforcement Order based on its violation of the MFJ in precisely the fashion that may well be involved here. US West attempted to sell its ETS switching services to the GSA in competition with AT&T's CCSA switching services by trying to assess its own service only a surcharge for off-network calls, while charging AT&T's service the more expensive Feature Group A rates for the equivalent functionality. See United States v. Western Electric, 846 F.2d 1422 (D.C. Cir. 1988).

The same situation could be presented here, but with even more serious implications. If US West has in fact attempted to justify unreasonably high IDE direct costs, such a practice would

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[7] In reviewing the September 1, 1994, virtual collocation tariff filings, ALTS asked US West to explain the derivation of certain numbers set forth in its Exhibit A, and also asked whether the methodology and specific amounts reflected in Exhibit A were identical to the methodology and specific amounts for those same functions recovered in US West's tariffs for competitive services (November 30, 1994, letter from R.J. Metzger).

US West's reply of December 5, 1994, refused to address the issue of US West's compliance with the MFJ:

> "You seek to ascertain information that is not part of the public record in this proceeding; was not information that US WEST was required to provide as part of its general tariff filings or support for its Virtual Expanded Interconnection ("VEIC") service; is not information that U S WEST is required to provide with respect to its tariff support for other products and services; and which appears to be sought for purposes wholly unrelated to the instant Expanded Interconnection proceeding. In that light, I believe U S WEST is required to be fairly circumspect with respect to its responses to you organization." (Emphasis supplied.)

"strike at the MFJ heart" in just the same way that US West's attempt to impose different rates for competitive off-net services did (846 F.2d at 1428). And the present situation would be even more serious, since it could foreclose not just a single sale, as was the case with the GSA contract, but could preclude competition over a wide range of services from potential interconnectors.

US West's renewed contentions here that there are no "comparable services"[8] are paralleled by the GSA case, where US West attempted to argue that off-network access from its ETS service was subject to different regulatory treatment than AT&T's CCSA service. Both the District Court and the Court of Appeals flatly rejected such asserted distinctions as a defense to an MFJ violation (846 F.2d at 1426, 1430). Indeed, US West displays a naked disregard for the FCC's Virtual Interconnection order,[9] where the Commission itself repeatedly refers to "comparable" internal LEC interconnections (see, e.g., ¶¶42, 44, 54, 57, 61,

[8] See US West Phase II Direct Case at 11, n. 28: "We remain of this position. Thus, while we respond to the Bureau's inquiries herein and below, our response should not be deemed as acceptance of the proposition that the Bureau, in fact, is comparing comparable services in its inquiry or analyses."

[9] See US West's Phase I Direct Case where it asserted that: " ... one can't be asked to 'defend' a proposition that one deems illegitimate" (at 9). On the contrary, it is fundamental in a system of law that all parties will comply with outstanding legal requirements so long as they remain in effect, including those they believe to be unfounded or "illegitimate."

95).[10]

ALTS has asked US West to provide it with copies of the portions of the DOJ reports it prepares (in order to prove that its current operations no longer violate the anti-discrimination provisions of the MFJ) which deal with its virtual collocation rates. US West has refused to provide these reports. ALTS then filed an expedited motion on October 19, 1995, seeking production of these documents, and US West responded on October 30, 1995.

US West claims in its reply to ALTS' motion that the MFJ's non-discrimination standard "is different from the standards associated with US WEST's obligations under MFJ/EO. The relevance and helpfulness of documents generated with respect to the latter is certainly not patently obvious in the context of a Communications Act investigation" (US West Response at 3). But US West cites no authority for this position, nor is it capable of supporting this claim since the very behavior which led to its violation of the MFJ -- the offering of the same functionality at a lower price when used in conjunction with other US West services -- was found unlawful by this Commission in Bell

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[10] See also Section IV (I) of US West's Enforcement Order which expressly requires that such an analysis be made for all new services:

> "It is further ordered that US West's own internal formal process for reviewing business practices shall include any new products US West desires to offer to its end users and/or competitors, including any existing product whose underlying cost methodology, pricing, or interconnection terms or conditions are substantially modified."

Atlantic Petition for Declaratory Ruling, 2 F.C.C. 2d 7458 (1987), at ¶ 17:

> "It is clear that the BOCs are offering Centrex-ETS in direct competition with CCSA service and that the two services are very similar in terms of the functions they perform. Thus, according different access charge treatment to the two services would raise serious competitive concerns."

US West's initial virtual collocation tariffs bear a chilling parallel to its attempt to circumvent the Commission's access charge structure in the course of trying to sell its ETS service to the GSA. The Commission should take advantage of the fact US West is now required to document its reasoning in defense of such behavior concerning new services sold to its competitors in the form of reports to the Department of Justice, and order that these documents be made available to ALTS immediately to the extent they involve the calculation of virtual collocation rates.

C. The "Confidentiality" Requests of the RBOCs are Inconsistent with their Obligations under the Communications Act, the Antitrust Laws, the MFJ, and the Commission's Rules for New Service Offerings.

Just as occurred with the original virtual collocation tariffs, SWB and Ameritech have sought confidentiality protection for some of their supporting data. At the heart of the problem, in ALTS' understanding, is SWB's contention that its equipment prices reflect negotiated vendor prices which are confidential and cannot be disclosed without the vendor's consent (September 19, 1994, reply comments of SWB to TCG FOIA request at 3; September 22, 1994, reply to MFS FOIA request at 2). SWB further argues that the publicly available prices are "catalog" prices which are higher than those enjoyed by SWB, and that interconnectors would only hurt themselves by compelling disclosure (id. at 6).

Without any discourtesy to SWB's undoubted purchasing skill, the Commission need only look at plain business reality to understand that SWB has no sound basis for seeking confidentiality. There is absolutely nothing about SWB's network, its volume of purchases, its negotiating ability, or any other factor that puts SWB in a position to capture unique vendor prices. And even if there were, the ordinary business practice in procurement situations is to obtain "most favored nation" status, which assures the purchaser of identical treatment should any similar customers receive better prices from the vendor in the future. The contention that SWB somehow enjoys "special" prices from its vendors that are not available to similarly-situated customers thus defies ordinary business practice and common sense. True, the existence of such arrangements does encourage vendors to seek confidentiality, and thereby minimize the risk of other customers invoking their "most favored nations" clauses (as is well demonstrated by the vendor letters attached to SWB's September 19, 1994, response to TCG), but SWB cannot escape its regulatory obligations by hiding behind its vendors' contractual exposure.

Equally troubling is SWB's claim this data "is merely a tool to assist the Commission," and that "[t]he Commission is capable on its own of examining the prices listed in the cost support and the input of third parties would be of no assistance" (id. at 9). This is a blatant misportrayal of the tariff review process as it has existed throughout the Commission's six-decade history. At no time has the Commission had the appropriations, the person-power, or the access to ordinary business systems and expertise that would be needed to independently verify each and every datum that may be contained in the immense stack of filings submitted on September 1, 1994. Instead, the Commission has always relied upon the comments of informed intervenors in deciding how to allocate its own limited resources for the purpose of tariff review. SWB's position would completely overturn this traditional process.

The refusal of SWB and Ameritech to provide the underlying cost data required by the Phase II Designation Order is particularly telling in light of the Commission's determination that the expanded interconnection service offerings would be treated as "new services," thereby requiring cost support. This requirement is meaningless if the required data is concealed from the public. SWB and Ameritech should both be required to produce this data immediately.

III. SPECIFIC DIRECT COST ISSUES

A. Direct Cost Components

1. Provision of Interconnector-Designated Equipment

SWB and US West are required by the Phase II Designation Order to justify their direct costs for Interconnector-Designated Equipment ("IDE") because they initially exercised their right to decline to accept a $1 leaseback arrangement in their original virtual collocation tariff filings. As a threshold matter, US West loudly proclaims that the lawfulness of this provision should not be investigated because so few interconnectors took advantage of its initial tariff, and US West has now abruptly reversed its position by accepting "no cost leases" of IDE.

This is illogic on a breathtaking scale. US West is really arguing that since its original tariff did so good a job of holding off interconnectors, the Commission does not need to investigate the lawfulness of those initial tariffs. But this bizarre contention would have the inevitable effect of immunizing US West and every other carrier from any compliance enforcement. Just make sure a tariff is sufficiently unlawful that no one can afford to use it, and cancel it as soon as the Commission threatens an investigation!

US West's desire to run and hide from its initial tariffs is certainly understandable. Both US West and SWB flatly refused to accept equipment from interconnectors. See, e.g., SWB's outrageous preconditions (D&J at 4-5):

> "SWBT will consider such offered prices [by interconnectors] to be reasonably set if the interconnector offers the price under the same terms and conditions it offers such equipment to any other purchaser of the equipment and, if the interconnector holds itself out as the least-cost provider, SWBT must be allowed to purchase as many units of the equipment as it desires, even if such equipment will be used by SWBT to provide service to others."

US West was even more blunt (D&J at 2-4): "US West does not intend to purchase equipment quotes from interconnectors, regardless of the price proffered from them to us." (Emphasis supplied.)

Obviously, these "preconditions" do not appear in the Virtual Interconnection Order, nor do they make any sense (why should SWB care if anyone else could buy the same IDE from an interconnector at the same price, and even if it did care, what would give it the authority to impose such a requirement?). However, the fundamental point for present purposes is that trying to make an "offer" of IDE to SWB or US West is much more complex and difficult than offering to buy a new car. In particular, it requires a good faith participation by the "purchaser" LEC in establishing the relevant physical environment, power needs, local technical requirements, testing aspects, etc., that simply cannot be assessed by a potential interconnector in a vacuum.

By declining to participate in IDE negotiation, and erecting impossible and unsupported preconditions, SWB and US West have effectively sabotaged the "offer" benchmark which the Commission has created to shield interconnectors from the fact that (at ¶ 124): "LECs do not have an incentive to obtain the lowest possible price, since their prices will be passed on to their competitors, the interconnectors."

US West and SWB simply refuse to address this plain anticompetitive behavior in their Phase II direct cases. According to SWB (Direct Case at 5-6): "The procedure for determining the lowest reasonably available prices when an interconnector designates IDE that Southwestern Bell uses in the same wire center are identical to the procedures for other equipment except that, as mentioned in response to Paragraph 21(b)(I) above, SWBT may already have negotiated contracts and prices for that IDE." ALTS has no problem with SWB's current public position that interconnectors should get "the benefit of SWBT's negotiated best price" (id.). But since SWB refuses to provide its underlying equipment, ALTS has no way of determining whether SWB's position is actually reflected in its rate calculations. SWB has defaulted on its burden of proof here until such time as it provides the underlying costs and rate calculations which would confirm its new position.

US West's Direct Case on this point is equally defective. First, and most importantly, the Commission should recognize that US West's new tariffs do not use the $1 leaseback approach under which title passes to the LEC, but rather a "no-cost lease option" under which it is much less clear that title transfers to the LEC (Direct Case at 2). Obviously, US West is not doing this to save itself $1 on each virtual collocation arrangement. Rather, it is clearly trying to concoct an appellate challenge in which it will try -- quite disingenuously -- to portray itself as a victim of a new "physical collocation" regime which is beyond the Commission's powers for the same reasons adopted by the D.C. Circuit in Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

The Commission should do its appellate lawyers a big favor by blowing the whistle on this foolishness and requiring US West to refile its tariff using only those purchase agreements, in the event it chooses to offer purchase agreements, which clearly transfer legal title to US West.

Beyond US West's appellate gamesmanship, its Direct Case is plainly defective in defending its initial tariff treatment of IDE costs. US West's original tariffs were based on list prices for IDEA, prices that were astronomically higher than the actual prices paid by US West. US West has since done an abrupt aboutface, and now offers what it call a "no cost option." Furthermore, US West now admits in its Direct Case (at 6, n.11) that -- contrary to the Commission's intent and common sense, but quite consistent with an anti-competitive motivation -- " ...' under our old Transmittals, we would not have has a 'procedure[] for recomputing an equipment rate when an [IC] offer[ed] to sell [US WEST] the desired equipment at a price lower than that upon which the tariffed rate [was] based."

US West insists that its earlier use of list prices that were much higher than its own costs for the same equipment is now "immaterial and irrelevant" (Direct Case at 5, n. 10). But ALTS respectfully suggests that such blatant anticompetitive actions are of central interest to the United States Department of Justice, the antitrust courts, and to this Commission's administration of pro-competitive policies. And this is precisely where US West's reports to DOJ concerning its review for anti-competitive effect of new service rates that are used by its competitors (see discussion supra at pp. 9-10) would be most illuminating for the Commission. Did US West inform the Department that it was jacking IDE prices sky-high over the amounts it really paid for such equipment (as much as 600% for some equipment; ALTS Petition to Suspend US West Tariff Trans. No. 531, filed October 14, 1995, at 15)? If US West did inform the Department, what rationale did it employ, and how did it explain its change of mind when it suddenly decided to change its stance? But rather than supply the facts, US West simply states that (Direct Case at 7): " ... US WEST has little additional to say on the matter of rate-setting for the VEIC IDE beyond that which we have said previously."

Yes, it's easy to understand why US West would like its original virtual collocation tariffs to drop out of sight without a trace, but they won't. The Commission should promptly grant ALTS' pending motion for production of US West's reports to DOJ, and thereby provide all parties with an opportunity to compare US West's explanation of its original virtual collocation tariffs with its current story.

2. **Charges for Maintenance (¶ 30); for Cable Installation and Cable Support (¶ 34); for Provisioning Charges (¶ 42); for <u>Power (¶ 46); and for Floor Space (¶ 52)</u>.**

The <u>Phase II Designation Order</u> requires the five RBOCs whose virtual collocation tariffs were protested by ALTS to "explain any differences between their recovery of cable installation costs in their rates for their comparable DS1 and DS3 services" (¶ 34(a)). Unfortunately, these RBOCs refuse to calculate the amounts recovered for cable installation and cable support because they do not have "separate rate 'elements' for 'installation of cabling and cable support structures'" (US West

Direct Case at 14).[11] Essentially the same arguments are presented as to provisioning[12], powering of IDE[13], and floor space.[14]

But the fact that the structure for the recovery of these functions in the DS1 and DS3 rates is different in no way prevents these RBOCs from calculating the amount recovered for these functions in those rates, and then comparing that amount to the amount recovered for the same function in their separate charges for virtual collocation services.

The point here is both simple, and fundamental to the Commission's successful supervision of the implementation of

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11 See also Ameritech Direct Case at 6; Bell Atlantic Direct Case at 3; BellSouth Direct Case at 4: "In fact, different cost recovery methods are employed ..."; SWB Direct Case at 11: DS1 and DS3 rates "do not segregate cable installation charges into separate rate elements."

12 See, e.g., SWB Direct Case at 13: "[DS 1 and DS3] circuit design engineering costs are part of the direct cost development for DS1 and DS3 services, and are recovered through a combination of non-recurring rate elements and contribution from recurring rate elements ...."

13 See, e.g., Ameritech's Direct Case at 10: "... the cost of powering the equipment must be recouped in a separate, stand-alone charge." An exception is Bell Atlantic, which states that its power costs are recovered identically as between virtual collocation and access services. Bell Atlantic Direct Case at 5.

14 See, e.g., BellSouth Direct Case Exhibit 1 at 9: "Because there is no rate element for collocated equipment [sic], floor space costs attributable to such equipment must be recovered through a separate rate element."